

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STEPHANIE LOWE,

Plaintiff,

v.

No. 14-cv-0775 KG/SMV

BNSF RAILWAY COMPANY,

Defendant.

**ORDER DENYING REMAINDER OF
DEFENDANT BNSF RAILWAY COMPANY'S MOTION FOR SANCTIONS FOR
PLAINTIFF'S ALLEGED SPOILIATION OF EVIDENCE**

THIS MATTER is before the Court on Defendant BNSF Railway Company's Motion for Sanctions for Plaintiff's Spoliation of Evidence [Doc. 74] ("Motion"), filed on July 15, 2015. Plaintiff responded on August 4, 2015. [Doc. 84]. Defendant replied on August 19, 2015. [Doc. 95]. The Court heard oral argument on September 3, 2015. On the same day, the Court entered an order denying the Motion as to the floor panels and reserving ruling on the Motion as to the photographs of Plaintiff's bruising. [Doc. 111].

The Court allowed Defendant to take a supplemental deposition of Plaintiff regarding the alleged photographs of her bruising. *Id.* The Court directed Defendant to reevaluate the remaining portion of the Motion after the deposition. Specifically, if after the supplemental deposition, Defendant still required a ruling on the Motion as to the alleged photographs of the bruising, it was ordered to submit a supplemental brief no later than November 2, 2015. However, if after the supplemental deposition, Defendant no longer required a ruling on the Motion as to the alleged photographs of the bruising, Defendant was ordered to file a notice of

withdrawal of that portion of the Motion, no later than November 2, 2015. November 2, 2015, came and went. Defendant neither supplemented its Motion, nor withdrew the remainder.

On an unrelated matter, Defendant was granted leave to depose Plaintiff no later than April 11, 2016, regarding her medical treatment and/or medical providers. [Doc. 121]. Allowing for the possibility that Defendant intended to depose Plaintiff on both issues (the alleged photographs of her bruising and certain medical treatment/providers) at the same time, the Court withheld ruling on the remainder of the Motion (for sanctions for alleged spoliation). However, more than four weeks have passed since the April 11, 2016 deposition deadline, and Defendant has still neither supplemented its Motion, nor withdrawn the remainder.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the remainder of Defendant BNSF Railway Company's Motion for Sanctions for Plaintiff's Spoliation of Evidence [Doc. 74], as to the alleged photographs of the bruising, is **DENIED**.¹

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge

¹ The entire Motion has been resolved, and no portion remains.